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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,644	08/28/2003	Mitsuo Yasushi	Q77161	5561

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WASHINGTON, DC 20037

EXAMINER

BERTRAM, ERIC D

ART UNIT	PAPER NUMBER
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3766

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/649,644

Applicant(s)

YASUSHI ET AL.

Examiner

Eric D. Bertram

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/28/03, 10/19/04

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statements (IDS) submitted on 8/28/03 and 10/19/04 were filed in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Specification

3. The disclosure is objected to because of the following informalities: The entire specification is rife with grammatical and punctuation errors as it appears the specification is merely a machine-generated translation of a Japanese patent application. For clarity's sake, it is requested that the applicant review the specification and revise it accordingly in order to comply with 35 U.S.C. 112, first paragraph, which requires the specification to be written in "full, clear, concise, and exact terms."

Appropriate correction is required.

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: "A Sound Reproduction System and Method Based on Physical and Mental States of a Driver".

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 13-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to a computer data signal embodied in a carrier wave. It has been held that a computer program that is embodied on an intangible medium, such as a carrier wave, is not statutory subject matter because it represents an abstract idea. According to *In re Beauregard*, 35 USPQ2d 1383 (Fed. CIR. 1995), computer programs must be embodied in a tangible medium in order to be considered patentable subject matter. While a carrier wave is a real physical entity, it is not tangible in the same sense that a floppy diskette would be considered tangible. See MPEP 2106.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Saitoh et al. (US 5,813,989, hereinafter Saitoh). Saitoh discloses a reproduction controlling system of a vehicle as shown in figure 1. Included is an audio system 1, which controls reproduction sound data that is stored on a CD (Col. 2, lines 40-44). A navigation

system 3 acquires driving information of the vehicle, including speed and the type of road the vehicle is traveling on (Col. 3, line 5-Col. 4, line 14). Saitoh also discloses a heartbeat detection circuit 9, which determines the heartbeat of a patient and any variability in the heartbeat of a driver (Col. 4, lines 54-58). Based on the driving information and heartbeat signal, a CPU 11 determines the physical and mental state of the driver (see abstract, Col. 6, lines 6-16 and Col. 8 line 47-Col. 9, line 15). Based on the sound data in the CD, the tempo, volume, and frequencies of the sound data is changed in order to increase the parameters based on the detection of fatigue, sleepiness, or impatience (tension) of a driver (Col. 9, lines 16-28).

Claim Rejections - 35 USC §§ 102103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 13-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Saitoh. As described above, Saitoh discloses that applicant's basic invention, including a method loaded onto a CPU 11 for carrying out the method described in claims 13-18. However, Saitoh is silent as to how the method is loaded onto the CPU. It is the Examiner's opinion that the program was inherently loaded via a tangible, computer readable medium. However, in the alternative, it would have been obvious to one of ordinary skill in the art at the time of the

applicant's invention to load the program using a tangible, computer readable medium, as this is a notoriously old and well known way to program a computer.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Curry et al. (US 3,922,665), Ikeyama (US 4,706,072), Torch (US 2001/0028309), and Atlas (US 6,353,396) all disclose systems and methods of preventing driver fatigue through heartbeat detection and sound generation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Thursday from 8:30-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3766

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric D. Bertram
Examiner
Art Unit 3766



Robert E. Pezzuto
Supervisory Patent Examiner
Art Unit 3766

EDB